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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

13743 (35371-63626)

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on \_\_\_\_\_

Signature \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Application Number

10/619,956

Filed

July 15, 2003

First Named Inventor

Terrence P. Meier

Art Unit

1772

Examiner

Patricia L. Nordmeyer

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

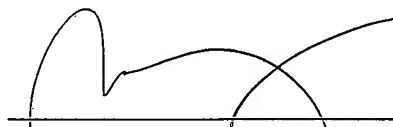
I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒ attorney or agent of record.  
Registration number 37,963

☐ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

  
Signature  
Mitchell J. Weinstein  
Typed or printed name

(312) 476-7593  
Telephone number

May 25, 2006  
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

<i>In re:</i>	Terrence P. Meier	)	Art Unit:	1772
		)		
Serial No.:	10/619,956	)	Examiner:	Patricia L. Nordmeyer
		)		
Filed:	July 15, 2003	)		
		)		
For:	TWO MATERIAL OVER-	)		
	MOLDED FITMENT	)		
		)		
Attorney		)		
Docket No.:	13743 (35371-63626)	)		
		)		

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Responsive to the Official Action February 28, 2006 made final, Applicant files herewith a Notice of Appeal, and the present Pre-Appeal Brief Request for Review in connection with the above-identified application.

Applicant respectfully requests reconsideration, reexamination and allowance of pending claims 1-9 and 18-27 on the grounds that the Examiner has clearly failed to identify the presence of essential elements required to establish a prima facie case of obviousness.

In the present application, claims 1-9 and 18-27 are pending and stand rejected. An Amendment after final was filed on April 17, 2006 after discussion with the Examiner. The Amendment was not entered and an Advisory Action issued. The present request follows from the Amendment and Advisory Action.

**The Presently Claimed Invention:**

Briefly, the present invention is directed to an over-molded fitment for mounting and sealing to a flexible packaging material. The fitment includes a flange having first and second sides and a spout extending upwardly from the first side of the flange. A molded sealing media is molded over and onto

the first side of the flange.

The flange and spout are integral with one another and formed from a single first material. The sealing media is formed from a second material different from the first material. The sealing media material has a density less than the density of the first material. The sealing media is disposed between the first side of the flange and the flexible packaging material when the fitment is mounted and sealed to the flexible packaging material. The sealing media is heat activated to effectively weld the fitment to the flexible packaging material. A package formed from the flexible packaging material and the spout is also claimed.

The Rejections:

As to the Action, the Examiner has continued the rejection of claims 1, 2, 4, 18, 19 and 24 under 35 U.S.C. 103(a) as unpatentable over De Van et al, U.S. Patent No. 3,696,969, in view of Brown, U.S. Patent No. 5,203,470, and has continued the rejection of claims 3, 5-9, 20-23 and 25-27 under 35 U.S.C. 103(a) as unpatentable over De Van in view of Brown, and further in view of Knox, III, U.S. Patent No. 4,851,272.

The Examiner characterizes De Van as disclosing a flange having first and second sides with an integral spout extending upwardly from the first side of the flange and a sealing media molded over and onto the first side of the flange. The Examiner states further that the material that is molded over through heat sealing, or covering the flange of the spout, is formed from a second, lower density material than the flange and spout material.

The Examiner notes that that De Van fails to disclose that the sealing media is heat activated, but cites to the Brown patent to support that it is known to heat seal a spout to a flexible bag material.

The Failure of the Rejections:

The bases for the rejections fail to make obvious the claimed invention. Specifically, the Examiner's reading of the De Van patent is far too expansive with respect to the claimed "molded sealing media molded over and onto the first side of the flange". In fact, what the Examiners reads in

De Van as disclosing the molded sealing media is not in fact a molded sealing media. Nor is the molded sealing media disclosed in any of the other art of record.

The present application describes the structure as follows:

**[0023]** The fitment 10 includes a layer of material 24 that is over-molded on the face or side 16 of the flange 12 that is configured for sealing to the packaging P material (defining a sealing region 26). The over-mold 24 material is a low melt polymer formulated to provide a faster cycle time for sealing to the LDPE packaging P material. The low melt polymer serves as a tie layer between the HDPE fitment 10 material and the LDPE packaging P material.

**[0024]** In a present fitment 10, the low melt tie layer 24 is molded over or onto the flange face 16. That is, subsequent to the injection molding process for forming the fitment 10, the low melt material 24 molded onto the fitment 10, over the flange face 16.

Accordingly, it is clear from the specification that the sealing media is an element that is molded (for example by injection molding) onto the flange, subsequent to molding the fitment.

The Examiner's position has been that "conventional" adhesives are within the scope and meaning of the over-molded sealing media. Applicant strenuously disagrees. De Van discloses an end plate and plug secured to one another by an adhesive (col. 3, lines 9-12), Brown shows heat stakes that insert through the package and are heated to expand over the package (col. 4, lines 46-55) and Knox, III discloses a multi-layered structure with a sealing flange and gland (col. 1, lines 53-56).

In no case, does the art of record disclose an over-molded sealing media. Rather, each instance of joining the fitment to the package in the references is to a more-or-less conventional seal juncture. There is nothing in the art of record that even suggests that a sealing media or material is to be molded onto the flange.

In rejecting the claims, the Examiner defines molded as "to give shape or to form in a mold" and states that "the adhesive is given a shape when it is placed on the surface of the flange from the container that the adhesive is extruded", (see Action mailed February 28, 2006). Applicant submits that such a definition is, at best, overly far-reaching. Under this definition, anything placed is molded. This is clearly

not how Applicant intends that molded be defined. Nor is it a typical understanding of molded. That “the adhesive is given a shape when it is placed on the surface of the flange from the container that the adhesive is extruded”, is far too broad and encompassing for any reasonable reading of the word molded.

The present instance of over-molding a sealing media or material onto another (flange material) is further supported in the specification with respect to the description of the method of making the fitment. Specifically, the specification provides that:

**[0031]** In carrying out the present over-mold, a fitment 10 was formed using, for example, standard, known injection molding techniques. The fitment 10 was then positioned in a subsequent mold (not shown) that included a cavity into which the fitment was positioned and having a cut-out or additional mold cavity conforming to the shape and size of the over-mold portion (i.e., an over-mold cavity). The over-mold 24 material was then injected into the over-mold cavity onto the fitment flange 16.

To this end, it is Applicant’s position that the claimed over-molded sealing media is more than the conventional application of an adhesive to the flange or heat sealing the fitment (flange) to the package and that the Examiner has simply failed to consider the entirety of the claimed invention.

Moreover, it is Applicant’s position that the Examiner has also failed to show that the art of record discloses a sealing media that is heat activated to effectively weld the fitment to the flexible packaging material. The Examiner cites to Brown to show that it is known to heat seal a spout to a flexible bag material. However, what Brown shows is a configuration in which the packaging material requires additional openings and the spout requires spikes that insert through the additional opening and are melt down, onto the package material. What Brown clearly fails to show is a sealing media that is disposed between the flange and the flexible packaging material that is heat activated to effectively weld the fitment to the packaging material.

Accordingly, Applicant submits that claims 1-9 and 18-27 are allowable over the art of record and respectfully and earnestly solicits early indication of same.


Applicant believes that there is no fee due in connection with the present PRE-APPEAL BRIEF REQUEST FOR REVIEW. If however a fee is due in connection with this document, the

Serial No. 10/619,956  
Art Unit 1772

Pre-Appeal Brief Request for Review

Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 50-2035. Should there be any questions or concerns in connection with the present submittal, it is respectfully requested that the undersigned be contacted.

Respectfully submitted,

By   
\_\_\_\_\_  
Mitchell J. Weinstein  
Reg. No. 37,963

Dated: May 25, 2006  
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